

INTERNATIONAL ASSOCIATION OF JUDGES

First Study Commission – Annual Meeting in Abidjan (October 28 – 31 2002)

AUSTRALIA

THE ROLE AND FUNCTION OF THE HIGH COUNCIL OF JUSTICE OR ANALOGOUS BODIES IN THE ORGANISATION AND MANAGEMENT OF THE NATIONAL JUDICIAL SYSTEM

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A. JUDICIAL CONFERENCE OF AUSTRALIA

1. Constitution/Composition

1.1 Is there a Superior Council for the Judiciary or an analogous body, or bodies, in your judicial system?

The Judicial Conference of Australia Inc (“the Conference”), established in 1993, is an independent association of Australian judicial officers. Its objects all relate to the public interest in maintaining a strong and independent judiciary within a democratic society that adheres to the rule of law. It is funded by membership subscriptions and income from its colloquia.

1.2 Give a brief summary of the role or function of the Conference

The Conference is established by and governed in accordance with its Rules (last amended October 2000). Rule 3 sets out the objects of the Conference as follows:

- to ensure, in the public interest, the maintenance of a strong and independent judiciary;

- to promote, foster and develop within the executive and legislative arms of government, and within the general community, an understanding that a strong and independent judiciary is indispensable to the rule of law and continuation of a democratic society in Australia;
- to achieve a better public understanding of the role of the judiciary in the administration of justice;
- without diminishing the independence of the judiciary, to improve the relationship between the judicial and executive arms of government;
- to maintain, promote and improve the quality of the judicial system in Australia;
- to ensure that access to the courts is open to all members of the community;
- to promote research to assist in the achievement of these objects; and
- to liaise with and, if appropriate, act in conjunction with, the Chief Justices' Council or similar body.

1.3 Who are members of the Conference and what are the procedures for the appointment of members?

Membership of the Conference is open to all serving and retired judges in Australia and to masters, judicial registrars and magistrates. Membership currently stands at 435.

A person who is qualified for membership of the Conference must lodge a completed membership application form with the Conference Secretary together with an annual membership fee. Once this is done, the person's name is entered in the Register of Members.

1.4 How is the Conference constituted?

The Governing Council of the Conference is responsible for controlling the business and affairs of the Conference. The Governing Council may consist of the following members (subject to appointment by their respective courts, their willingness to act and their being or becoming a member of the Conference before their appointment):

- a judge of the High Court of Australia;
- a judge of the Federal Court of Australia;
- a judge of the Family Court of Australia;
- one Judge from each of the Supreme Courts of the States and Territories of Australia;
- one Judge from each of the District or County Courts of the States and Territories of Australia;
- one member from the Federal Magistrate's Court and each of the Magistrates' Courts or Local Courts of the States and Territories of Australia;

- a member of any other court whose judges are entitled to be members of the Conference which the Governing Council considers ought to be represented on the Council; and
- a judge of the Land and Environment Court of New South Wales.

The Governing Council currently has 24 members and is chaired by the Hon Justice CSC Sheller of the Supreme Court of New South Wales. The Governing Council meets at least 3 times a year. Any 7 members of the Council constitute a quorum for the transaction of the business of a meeting.

1.5 Is there a majority of Judges on the Conference? Are any of the members of the Conference elected by Judges and if so how many?

Of the 435 members of the Conference, 337 are Judges. No members of the Conference are elected by Judges.

1.6 What is the period of office of a member of the Conference and under what conditions does the terms of office come to an end? May a member be removed from office against his will and if so under what circumstances?

There is no restriction on the length of membership of the Conference. A person ceases to be a member only if they die, resign from membership (written notice required) or fail to pay their subscription fee within 3 months of the due date for such payment.

The members of the Governing Council are appointed by their respective courts to hold office for a term of 2 years but may, on the expiry of that term, be reappointed. A person ceases to hold office as a member of the Governing Council if they die, cease to be a member of the Conference, resign from office, become insolvent, suffer from mental or physical incapacity or are absent without the consent of the Governing Council from all meetings held during any 6 month period.

There is no provision in the Rules for the removal of a member from the Register against his or her will.

1.7 To what extent is there a de facto influence on the work of the Conference by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities?

None at all.

2. Responsibilities of the Superior Council or analogous body

2.1 Is the Supreme Court subordinate to the Conference? No

2.2 Not applicable

2.3 Does the Conference have responsibility for the nomination or appointment of a judge? No

2.4 Does the Conference have the responsibility for the promotion of judges? No

2.5 Does the Conference have the responsibility in the appointment of Presidents of Courts? No

2.6 Does the Conference have responsibility for organising the training or continuing educations of judges?

Only incidentally through its annual colloquiums. At the Sixth Colloquium of the Conference, held in April 2002, papers were presented on public confidence in the judiciary, the problems associated with mandatory sentencing and the relationship between the judiciary and the media in Australia.

2.7 Does the Conference have responsibility for the initiation or conduct of a disciplinary procedure against a judge? No

2.8 Does the Conference have responsibility in the evaluation of the work of a judge? No

2.9 Does the Conference have responsibility for the drafting or preparation of the budget of the judiciary? No

2.10 Does the Conference have responsibility concerning the allocation of resources (personal and financial) within the budget approved by Parliament or Government? No

2.11 Are there any other significant responsibilities of the Conference not already mentioned? No

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages

3.1 If you have such a body, please list, very briefly, the advantages and disadvantages

Advantages: The Conference promotes the independence of the judiciary and is able to speak out

on matters of importance to the judiciary.

Disadvantages: There are no perceived disadvantages.

4. Particularities/Criticisms

4.1 *Are there some special features concerning the Conference which might be of special interest to others from a comparative point of view? If yes, describe.*

Only those already described.

4.2 *Are there particular fundamental problems concerning the role of the Conference in Australia?* **No**

4.3 *Are reforms under discussion or proposed?* **No**

B. AUSTRALIAN INSTITUTE OF JUDICIAL ADMINISTRATION

1. Constitution/Composition

1.1 Is there a Superior Council for the Judiciary or an analogous body, or bodies, in your judicial system?

The Australian Institute of Judicial Administration (“the AIJA”) is affiliated with The University of Melbourne as a research and educational institution. It is funded by the Standing Committee of Attorneys-General and also from subscription income from its membership.

1.2 Give a brief summary of the role or function of the AIJA

The principle objectives of the AIJA include research into judicial administration and development and conduct of educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.

The AIJA has published widely in matters of judicial administration and associated subjects such as case management, cultural and gender awareness, judicial ethics, technology and the courts and cross-vesting legislation.

1.3 Who are members of the AIJA and what are the procedures for the appointment of members?

AIJA membership is open to judges, magistrates, members of tribunals, practitioners, graduates in law or jurisprudence, researchers in law reform and related agencies, court or tribunal administrators, law librarians and others with an interest in judicial administration.

The AIJA’s membership as at 30 June 2002 was 1072.

A person who is qualified for membership of the AIJA must lodge a completed membership application form with the Membership Officer together with an annual membership fee. Once the application has been accepted, the person’s name is entered in the Register of Members.

1.4 How is the AIJA constituted?

The AIJA Council is the Institute’s governing body and consists of 21 elected, 6 appointed and 2 overseas members drawn from the judiciary, tribunals, court administrators, the legal profession,

government service and academia. The President of the Council is currently the Hon Justice Murray Kellam of the Victorian Civil & Administrative Tribunal.

Council members take a very active role in the AIJA's affairs, chairing committees and working parties and providing direct assistance with the planning and development of both the education and research programmes.

The AIJA has 4 standing committees:

- a Membership Committee → to promote the utility of the AIJA to its existing and potential members;
- a Practice Committee → to advance improvements in the practice of judicial administration in all Australian courts and tribunals;
- a Research Committee → to develop proposals for advanced AIJA research into matters of judicial administration; and
- an Education Committee → to develop proposals for educational activities to be undertaken by the AIJA.

The AIJA Board of Management consists of the President and Deputy Presidents together with three other Council members who are elected to the Board by the Council. Other members of the Council can also be co-opted to the Board. The task of the Board is to supervise the work of the AIJA Secretariat and to exercise such delegated powers as the Council sees fit. The Board takes a direct role in receiving reports from the Secretariat in relation to the AIJA's day to day operations and in dealing with those aspects in between Council meetings.

1.5 Is there a majority of Judges on the AIJA? Are any of the members of the AIJA elected by Judges and if so how many?

No. Of the 1072 members of the AIJA, 382 are Judges. No members of the AIJA are elected by Judges.

1.6 What is the period of office of a member of the AIJA and under what conditions does the terms of office come to an end? May a member be removed from office against his will and if so under what circumstances?

There is no restriction on the length of membership of the AIJA. A person ceases to be a member only if they die, resign from membership (written notice required), fail to pay their subscription fee or are expelled by the Council.

The elected members of the Council hold office for a term of 3 years but may, on the expiry of that term, stand for re-election. A person ceases to hold office as a member of the Council if they die, become bankrupt, become of unsound mind, resign from office, cease to be a member of the AIJA, or are absent without the consent of the Council from 3 consecutive meetings.

1.7 To what extent is there a de facto influence on the work of the AIJA by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities?

None at all.

2. Responsibilities of the Superior Council or analogous body

2.1 Is the Supreme Court subordinate to the AIJA? No

2.2 Not applicable

2.3 Does the AIJA have responsibility for the nomination or appointment of a judge? No

2.4 Does the AIJA have the responsibility for the promotion of judges? No

2.5 Does the AIJA have the responsibility in the appointment of Presidents of Courts? No

2.6 Does the AIJA have responsibility for organising the training or continuing educations of judges?

The AIJA runs a number of regular activities in the area of judicial education, including programs for court administrators, court librarians, magistrates and judges. It has also been involved in developing courses in relation to a number of specialised areas including gender and cultural awareness, court technology and case management.

Programs conducted in 2001 included an Annual Conference, a Court Librarians' Conference, a National Judicial Orientation Program, a Technology for Justice seminar, an Alternative Dispute Resolution workshop and a program for Indonesian Judges.

In response to a recommendation of the 1991 report from the Royal Commission into Aboriginal Deaths in Custody, the AIJA launched an *Aboriginal Cultural Awareness Benchbook* in May 2002. It is

used by members of the judiciary to alert them to cross-cultural issues which may arise in the course of trials involving Aboriginal people.

In 1998, the Council of Chief Justices (see below) requested the AIJA to prepare a set of written guidelines for judicial conduct in order to give members of the judiciary practical guidance about conduct expected of them as holders of judicial office. Following a limited survey of judicial attitudes to issues of judicial conduct, the *Guide to Judicial Conduct* was drawn up by two retired judges and was published in June 2002. The Guide states that the principles applicable to judicial conduct have three main objectives - to uphold public confidence in the administration of justice; to enhance public respect for the institution of the judiciary; and to protect the reputation of individual judicial officers and of the judiciary. It also states that there are three basic principles against which appropriate judicial conduct should be tested to ensure compliance with the stated objectives – impartiality; judicial independence; and integrity and personal behaviour.

2.7 Does the AIJA have responsibility for the initiation or conduct of a disciplinary procedure against a judge? No

2.8 Does the AIJA have responsibility in the evaluation of the work of a judge? No

2.9 Does the AIJA have responsibility for the drafting or preparation of the budget of the judiciary? No

2.10 Does the AIJA have responsibility concerning the allocation of resources (personal and financial) within the budget approved by Parliament or Government? No

2.11 Are there any other significant responsibilities of the AIJA not already mentioned? No

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages

3.1 If you have such a body, please list, very briefly, the advantages and disadvantages

There are no particular advantages which require separate mention. There are no perceived disadvantages.

4. Particularities/Criticisms

4.1 Are there some special features concerning the AIJA which might be of special interest to others from a comparative point of view? If yes, describe.

They have already been described.

4.2 Are there particular fundamental problems concerning the role of the AIJA? No

4.3 Are reforms under discussion or proposed? No

C. JUDICIAL COMMISSION OF NEW SOUTH WALES

1. Constitution/Composition

1.1 Is there a Superior Council for the Judiciary or an analogous body, or bodies, in your judicial system?

The Judicial Commission of New South Wales (“the Commission”) is an independent statutory corporation established under the *Judicial Officers Act* 1986 (“the Act”). It administers its own financial appropriation by Parliament from the Consolidated Fund and is effectively independent from the Executive Government.

1.2 Give a brief summary of the role or function of the Commission

The Commission’s mission is “to enhance the quality of justice by providing the judiciary with research and education services, to give advice to the Attorney-General and to examine complaints against judicial officers”.

The objectives of the Commission are to:

- increase the efficiency and effectiveness of the use of judicial resources by improving the consistency of sentencing, and developing the skills and knowledge of judicial officers; and
- handle complaints in a timely and appropriate manner.

The Commission’s principal functions under the Act are to:

- assist the courts to achieve consistency in imposing sentences;
- organise and supervise an appropriate scheme for the continuing training and education of judicial officers; and
- examine complaints against judicial officers.

1.3 Who are members of the Commission and what are the procedures for the appointment of members?

The Commission consists of 10 members, including its president, the Chief Justice of New South Wales (currently the Hon Chief Justice Spigelman).

Section 5 of the Act provides that the Commission shall comprise six Official Members and four Appointed Members. The Official Members are:

- the Chief Justice of New South Wales;
- the President of the Industrial Relations Commission;
- the Chief Judge of the Land and Environment Court;
- the Chief Judge of the District Court;
- the Chief Judge of the Compensation Court; and
- the Chief Magistrate

The Appointed Members are appointed by the Governor on the nomination of the Minister. Section 5(5) of the Act provides that:

- One shall be a legal practitioner nominated following consultation by the Minister with the President of the New South Wales Bar Association and the President of the Law Society of New South Wales; and
- Three are to be nominated following consultation by the Minister with the Chief Justice and must be persons who, in the opinion of the Minister, have “high standing in the community”.

1.4 How is the Commission constituted?

See above.

The Commission meets each month, with all Members attending each meeting unless a leave of absence is granted. The quorum for a meeting of the Commission is 7 members, of whom at least one must be an appointed member.

The Commission may establish committees to assist it in connection with the exercise of any of its functions. However, a committee dealing with any aspect of complaints must consist entirely of members of the Commission, at least one of whom must be an appointed member.

1.5 Is there a majority of Judges on the Commission? Are any of the members of the Commission elected by Judges and if so how many?

Yes (see above).

No. The Official Members hold their positions on the Commission by reason of their judicial appointment. The Appointed Members are appointed by the Governor on the nomination of the Minister.

1.6 What is the period of office of a member of the Commission and under what conditions does the terms of office come to an end? May a member be removed from office against his will and if so under what circumstances?

Official Members: An Official Member shall hold office for the duration of their judicial appointment.

Appointed Members: An Appointed Member shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

An Appointed Member shall be deemed to have vacated office if the member dies, absents himself or herself from 4 consecutive meetings of the Commission (subject to certain conditions), becomes bankrupt, is suffering from mental incapacity, is convicted of an offence that is punishable by imprisonment for 12 months or more, resigns from office or is removed from office by the Governor.

The Governor may remove an Appointed Member from office for incapacity, incompetence or misbehaviour.

1.7 To what extent is there a de facto influence on the work of the Commission by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities?

The appointed members are appointed on the nomination of the Minister.

2. Responsibilities of the Superior Council or analogous body

2.1 Is the Supreme Court subordinate to the Commission? No

2.2 Not applicable

2.3 Does the Commission have responsibility for the nomination or appointment of a judge? No

2.4 Does the Commission have the responsibility for the promotion of judges? No

2.5 Does the Commission have the responsibility in the appointment of Presidents of Courts? No

2.6 Does the Commission have responsibility for organising the training or continuing education of judges?

Yes. The Commission offers an extensive conference and seminar programme for judicial officers in each court, ranging from induction courses for new employees to specialist conferences on specific aspects of law, procedure, judicial skills and techniques. Seminars are organised on a regular basis to keep judicial officers up to date with current developments and emerging trends.

In partnership with the AIJA, the Commission has, for the past seven years, conducted a National Judicial Orientation Program for judges from around Australia. The experience gained in this example of a national approach to judicial education was one of the stimuli for the new National Judicial College (see below)

The Commission has shared its expertise in judicial education with other jurisdictions. It has assisted with training programs for interstate judicial officers (eg. in the Magistrates' Orientation Program) and for judicial officers from overseas (eg. by training Indonesian judges).

The Commission produces a *Criminal Trial Courts Bench Book*, which is in constant use in criminal trial courts. Judges in the Supreme and District Courts, when directing juries on the law, rely to a significant degree on the suggested directions contained in the Bench Book. The Commission also produces *The Judicial Officers Bulletin*, which includes a digest of significant recent decisions and legislative changes, major developments of interest, court news, and articles; *The Judicial Review*, which contains a collection of the best papers from the Commission's conference and seminar programmes; and *The Children's Court Information Bulletin*, which addresses a range of issues relevant to the care and protection of children and young persons.

The Commission also provides a computerised Judicial Information Research System (JIRS) which has become an essential tool for courts and practitioners, both at first instance and at appellate level. The ready availability of comparable sentencing statistics for particular offences is of considerable assistance to the courts in ensuring consistency of approach in sentencing. In this respect, JIRS is widely regarded as the benchmark for best practice in Australia.

2.7 Does the Commission have responsibility for the initiation or conduct of a disciplinary procedure against a judge?

Yes. One of the responsibilities of the Commission under its legislative charter is to deal with complaints made against judicial officers. The Commission's function is to investigate a complaint, not to discipline a judicial officer.

A “judicial officer” includes a Judge or Master of the Supreme Court, a member of the Industrial Relations Commission, a Judge of the Land and Environment Court, the District Court or the Compensation Court and a Magistrate of the Local Court. It does not include Arbitrators, Registrars, Chamber Magistrates or legal representatives.

The Commission can only investigate complaints about matters that concern or may concern the ability or behaviour of a judicial officer. It does not deal with allegations of criminal conduct or corruption against judicial officers nor any matter which may be reviewed by a court of appeal.

A complaint may be made in writing by a member of the public or alternatively be referred to the Commission by the Attorney-General. On receiving a complaint, the Commission is obliged to conduct a preliminary investigation into the matter. In every case, the judicial officer is advised of the fact that a complaint has been made to the Commission and is provided with a copy of the complaint documentation.

Following the preliminary examination, the Commission is required to either summarily dismiss the complaint, classify the complaint as ‘minor’ or classify the complaint as ‘serious’. A complaint may be dismissed summarily if it is frivolous, vexatious or trivial or where the matters occurred at too remote a time to justify further consideration. The criterion for classifying a complaint as ‘serious’ is that the grounds of complaint, if substantiated, could justify parliamentary consideration of the removal of the judicial officer complained about from office. Any other undismissed complaint is defined by the Act as ‘minor’. Where the complaint is classified as minor it may be referred to the appropriate head of jurisdiction or to the Commission’s Conduct Division. If the complaint is regarded as serious it must be referred to the Conduct Division.

The Conduct Division comprises a panel of three judicial officers (one of whom may be a retired judicial officer), appointed by the Commission, who have the authority to undertake an investigation into a complaint against a judicial officer, and who may convene a hearing in connection with such an investigation. The hearing of minor complaints is conducted privately whilst those relating to serious complaints are convened in public.

If a complaint is dismissed by the Commission following its preliminary examination, both the complainant and judicial officer are advised in writing of the decision. In relation to minor complaints, the Conduct Division reports on the matter to the Commission. Where the complaint is classified as serious, a report, setting out the Conduct Division’s conclusions, is made to the Governor. In instances where a serious complaint has been wholly or partly substantiated and the Conduct Division is of the view that the matter may justify parliamentary consideration of the removal of the judge or magistrate from office, the Attorney-General is required to lay the report

before both Houses of Parliament. In this circumstance, the ‘appropriate authority’ (usually the relevant head of jurisdiction) may suspend the judicial officer pending the outcome of the inquiry.

2.8 Does the Commission have responsibility in the evaluation of the work of a judge? No

2.9 Does the Commission have responsibility for the drafting or preparation of the budget of the judiciary? No

2.10 Does the Commission have responsibility concerning the allocation of resources (personal and financial) within the budget approved by Parliament or Government? No

2.11 Are there any other significant responsibilities of the Commission not already mentioned?

One of the Commission’s principal functions is to assist the courts to achieve consistency in imposing sentences. The Commission's objectives in this area are to improve sentencing efficiency and to reduce the number of appeals against sentences, thereby releasing valuable resources which can be redeployed to reduce court delays.

The Commission has three major strategies for achieving its objectives in relation to sentencing consistency:

- through the Sentencing Information System (SIS), a computerised sentencing database developed by the Commission;
- by undertaking original research into topics of assistance to sentencers, in particular the use of alternatives to custodial sentences; and
- by publishing collated statistical data on aspects of sentencing

In the interests of creating a more efficient justice system, the SIS has been made available to the legal profession, government agencies and other organisations.

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages

3.1 If you have such a body, please list, very briefly, the advantages and disadvantages

There are no particular advantages or disadvantages warranting separate mention.

4. Particularities/Criticisms

4.1 Are there some special features concerning the Commission which might be of special interest to others from a comparative point of view? If yes, describe.

Only those stated above.

4.2 Are there particular fundamental problems concerning the role of the Commission in Australia? **No**

4.3 Are reforms under discussion or proposed? **No**

D. THE COUNCIL OF CHIEF JUSTICES

1. Constitution/Composition

1.1 Is there a Superior Council for the Judiciary or an analogous body, or bodies, in your judicial system?

The Council of Chief Justices of Australia and New Zealand (“the Council”) is comprised of the Chief Justices of each State and Territory, the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Chief Justice of New Zealand.

1.2 Give a brief summary of the role or function of the Council

The Council is a voluntary body which was formed for the purpose of providing a forum in which Chief Justices could informally discuss matters of mutual interest and exchange information on common issues. Each Chief Justice retains his or her complete independence and cannot be bound by any decision of the Council with which he or she does not agree.

The Council meets twice a year - in April and October. The meetings occur on a rotational basis such that over a four and a half year period one meeting will be held in each State, Territory and New Zealand.

1.3 Who are members of the Council and what are the procedures for the appointment of members?

The Council is comprised of the Chief Justices of the superior Courts of Australia and the Chief Justice of New Zealand.

1.4 How is the Council constituted?

See above.

The Council is chaired by the Chief Justice of Australia, so the Secretariat is located within the High Court of Australia. The Chief Executive and Principal Registrar of the High Court are the Secretary to the Council.

1.5 Is there a majority of Judges on the Council? Are any of the members of the Council elected by Judges and if so how many?

All of the members of the Council are Judges (see above).

1.6 What is the period of office of a member of the Council and under what conditions does the terms of office come to an end? May a member be removed from office against his will and if so under what circumstances?

Each member remains as such while he or she retains the office of Chief Justice.

1.7 To what extent is there a de facto influence on the work of the Council by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities?

As an independent body comprised of independent Chief Justices, the Executive or Legislative arms of government have no influence on the work of the Council, de facto or otherwise. The Council will, however, consider proposals put to it by the Executive for consideration. Usually these are matters of national interest such as the development of common laws throughout the country relating to the admission and practice of barristers and solicitors.

2. Responsibilities of the Superior Council or analogous body

*2.1 Is the Supreme Court subordinate to the Council? **No***

2.2 Not applicable

*2.3 Does the Council have responsibility for the nomination or appointment of a judge? **No***

*2.4 Does the Council have the responsibility for the promotion of judges? **No***

*2.5 Does the Council have the responsibility in the appointment of Presidents of Courts? **No***

2.6 Does the Council have responsibility for organising the training or continuing educations of judges?

The Council does not have any formal role as such in the training or continuing education of judges. However, from time to time the Council sponsors the development of documents of common

interest, for example, the recent *Guide to Judicial Conduct*, which was published for the Council by the AIJA (see above). Similarly, the Council sponsors the development of harmonised Rules of Court or harmonised practice and procedure with the aim of producing commonality. An example was the production of harmonised rules relating to Corporations Law.

The Council also provides a forum in which to discuss issues of national significance such as the establishment of a National Judicial College (see below).

2.7 Does the Council have responsibility for the initiation or conduct of a disciplinary procedure against a judge? **No**

2.8 Does the Council have responsibility in the evaluation of the work of a judge? **No**

2.9 Does the Council have responsibility for the drafting or preparation of the budget of the judiciary? **No**

2.10 Does the Council have responsibility concerning the allocation of resources (personal and financial) within the budget approved by Parliament or Government? **No**

2.11 Are there any other significant responsibilities of the Council not already mentioned? **No**

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages

3.1 If you have such a body, please list, very briefly, the advantages and disadvantages

There are no particular advantages or disadvantages warranting special mention.

4. Particularities/Criticisms

4.1 Are there some special features concerning the Council which might be of special interest to others from a comparative point of view? If yes, describe.

The relative informality and confidentiality of the discussions of subjects which are of mutual interest is the main feature which is likely to be of interest to others.

4.2 *Are there particular fundamental problems concerning the role of the Council in Australia?* **No**

4.3 *Are reforms under discussion or proposed?* **No**

E. THE JUDICIAL COLLEGE OF VICTORIA

1. Constitution/Composition

1.1 Is there a Superior Council for the Judiciary or an analogous body, or bodies, in your judicial system?

In February 2001, in response to a discussion report by a working party chaired by the Chief Justice of Victoria, the Victorian Attorney-General announced a proposal by the State government to establish a Judicial College of Victoria (“the College”). The *Judicial College of Victoria Act 2001* was assented to on 29 May 2001 and came into operation on 1 February 2002.

1.2 Give a brief summary of the role or function of the College

The functions of the College include assisting in the professional development of judicial officers and providing continuing education and training for judicial officers. Its courses are expected to focus on skills such as judgment writing and trial management, as well as providing the judiciary with assistance in understanding the processes and consequences of wide-ranging changes in society. The courses are expected to be compulsory for prospective judges and magistrates and would also be offered to existing judges on a voluntary basis.

1.3 Who are members of the College and what are the procedures for the appointment of members?

The College operates as a statutory corporation, governed by a board of 6 directors, 4 of whom are judicial officers. The judicial directors of the board are the Chief Justice of Victoria, the President of the Victorian Civil and Administrative Tribunal, the Chief Judge of the County Court and the Chief Magistrate, or their nominees, thereby representing all the courts. The Chief Justice, or his or her nominee, chairs the board. The two remaining directors are nominees of the Attorney-General, appointed by the Governor in Council for a period of up to five years. These directors are eligible for reappointment. One nominee of the Attorney-General has an academic background to assist in designing courses which are academically sound, and the other has broad experience in community issues affecting the courts.

1.4 How is the College constituted?

See above.

The board will meet at least once every 3 months. The quorum for a meeting of the Board is 4 directors, including at least one appointed director. The College may also establish committees to assist it in performing any of its functions.

1.5 Is there a majority of Judges on the College? Are any of the members of the College elected by Judges and if so how many?

See above.

1.6 What is the period of office of a member of the College and under what conditions does the terms of office come to an end? May a member be removed from office against his will and if so under what circumstances?

A judicial director shall hold office for the duration of their judicial appointment.

An appointed director holds office for the term (not exceeding 5 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment. An appointed director's office becomes vacant on the expiry of his or her term of office or if he or she resigns from office, is removed from office, is convicted of an indictable offence, or fails to attend 3 consecutive meetings of the Board.

The Governor in Council may remove an appointed director from office if of the opinion that the director is guilty of improper conduct in carrying out the duties of his or her office, is mentally or physically incapable of carrying out satisfactorily the duties of his or her office, or has failed to comply with any term or condition of appointment.

1.7 To what extent is there a de facto influence on the work of the College by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities?

None at all, other than as a consequence of the fact that two directors are nominees of the Attorney-General.

2. Responsibilities of the Superior Council or analogous body

2.1 Is the Supreme Court subordinate to the College? **No**

2.2 Not applicable

2.3 Does the College have responsibility for the nomination or appointment of a judge? No

2.4 Does the College have the responsibility for the promotion of judges? No

2.5 Does the College have the responsibility in the appointment of Presidents of Courts? No

2.6 Does the College have responsibility for organising the training or continuing educations of judges?

Yes. The College is currently in the process of developing judicial education programs.

2.7 Does the College have responsibility for the initiation or conduct of a disciplinary procedure against a judge? No

2.8 Does the College have responsibility in the evaluation of the work of a judge? No

2.9 Does the College have responsibility for the drafting or preparation of the budget of the judiciary? No

2.10 Does the College have responsibility concerning the allocation of resources (personal and financial) within the budget approved by Parliament or Government? No

2.11 Are there any other significant responsibilities of the College not already mentioned? No

F. THE NATIONAL JUDICIAL COLLEGE OF AUSTRALIA

In 2002, the AIJA, together with the Judicial Conference of Australia, commissioned a discussion paper on the concept of a National Judicial College (“NJC”). As there are more than 900 judges and magistrates in Australia, it was considered important that judicial officers undergo nationally consistent training in order to respond to Australia’s changing and increasingly diverse society and to developments in judicial responsibilities.

The NJC was officially launched on 2 August 2002. The launch coincided with the first meeting of the Council, which will provide the strategic direction and focus for the NJC’s operations.

The main role of the NJC will be to provide professional development for judges, masters and magistrates by providing courses in the development of practical skills and education in legal and social issues. There will also be orientation activities following appointment to judicial office and ongoing professional development. To avoid duplication of functions, the NJC will work cooperatively with other bodies that provide judicial education, such as the AIJA, the Judicial Commission of New South Wales and the Judicial College of Victoria.

The NJC will be established and funded as an independent entity and will be incorporated as a company limited by guarantee. It will be located at the Australian National University in Canberra and will report annually to Commonwealth, State and Territory Attorneys-General and to the Council of Chief Justices.

The governing body of the NJC will be comprised of a council of six members, four of whom will be judicial officers. Of the remaining two non-judicial members, one will be appointed by the Commonwealth Attorney-General, and the other by State Attorneys-General. Initial appointments will be for three years.

It is proposed that the cost of administering the NJC will be funded jointly by the Commonwealth, State and Territory Governments. The cost of judicial officers attending courses will be met by the relevant court.

G THE APPOINTMENT AND REMOVAL OF JUDGES IN AUSTRALIA

Pursuant to section 72 of the *Australian Constitution*, the Justices of the High Court and other federal courts are appointed by the Governor-General in Council. In practice that means an appointment by Cabinet, generally on the recommendation of the Attorney-General. The appointment of State judges follows a similar pattern, a Cabinet decision preceding the formal appointment by the Governor in Council. Section 6 of the *High Court of Australia Act 1979* (Cth) requires the Attorney-General for the Commonwealth to consult with State Attorneys-General about the appointment of a High Court Justice. Apart from the consultation for which s 6 provides, there is no other statutory prescription for consultation in relation to judicial appointment.

In terms of the removal of Judges from office, section 72 of the *Australian Constitution* provides that the Justices of the High Court and of the courts created by the parliament shall not be removed except by the Governor-General in Council, on an address from both houses of the parliament in the same session, requesting such removal on the ground of proved misbehaviour or incapacity.

By the constitutional amendments made to s 72 in 1977, the appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of 70 years. The appointment of a Justice of any other federal court shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court, being an age of not more than 70 years. The parliament may fix a lower age in the case of Justices of federal courts other than the High Court. Similar provisions apply in the State Courts.